THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.NO.7113 of 2005

DATED: 01-08-2006

Between:

R.M.Laxman Goud.

..Petitioner.

and

The Commissioner of Municipality, L.B.Nagar, Saroornagar Mandal, R.R.District and others.

..Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.7113 of 2005

ORDER:

Heard Sri P.V.Sanjeeva Rao, the learned counsel representing the writ petitioner, Sri Polisetti Radhakrishna, the learned counsel representing R1 and Sri Bhavani Shankar, the learned counsel representing R4.

2. This writ petition is filed for a writ of mandamus declaring the inaction of respondents 1 to 3 in not considering the petitioner's representations, letters and legal notice and consequently, their action in according permission to allot new service connection in respect of plot Nos.58 and 59 in Sy.No.57 of Christian colony, Karmanghat, Saroornagar Mandal, R.R.District in favour of respondent No.4 as bad, illegal and violative of Articles 14 and 21 of the Constitution of India and consequently direct the respondents 1 to 3 either to cancel or recall their approvals pending adjudication of civil dispute and pass such other suitable orders.

3. It is stated that the petitioner purchased plots bearing Nos. 58 & 59 covered by Sy.No.57 admeasuring 300 sq. yards situated

at Christian Colony, Karmanghat, Saroornagar Mandal, R.R. District, by virtue of registered sale deed No.5783/1989 dated 07-04-1989 from Mr. M.J.Samuel. Since the date of purchase, he had been in possession and enjoyment of the same without any interruption. It is stated that in the month of August, 1995, he approached respondent No.1 to accord permission for construction of house in his plot and he was informed that the Government of Andhra Pradesh had issued a circular to respondent No.1 not to accord permission for any constructions over Sy.No.57. Accordingly, the application of the petitioner was not considered and as a result, he could not take up any construction earlier. It is also stated that one Smt Rama Devi filed a suit for injunction against the petitioner in O.S.No.371 of 2000 on the file of the Principal Junior Civil Judge, Hyderabad, East & North, R.R. District, alleging that she purchased plot No.59 in part of Sy.No.57, situated at Christian Colony, Karmanghat, Saroornagar Mandal, R.R. District. In the said suit, she sought ad-interim injunction in I.A.No.1512 of 2000. On contest, the said I.A. was dismissed on 25-10-2000 observing that the petitioner was the absolute owner and possessor of the said plot. She preferred an appeal in A.S.No.105 of 2000 on the file of the IV Additional District Judge, Ranga Reddy District, and the same was also dismissed on 11-11-2002. It is further stated that to avoid all complications, the petitioner approached respondent No.1 again on 27-01-2005 and filed an application for according sanction. The respondent No.1 refused to receive the same reiterating that earlier circular is still in force. In view of the continuous threat of grabbing and encroachment, the petitioner informed respondent No.1 on 01-03-2005 that he was going to fence the

property with a wall and a room to protect his property. Thereafter, he raised a wall and a room and requested the respondent No.1 to assess the property for payment of property tax by allotting a house number. The said letter was received by him on 09-03-2005. Later, when he approached respondents 2 & 3 to allot electricity meter for the said room, he was directed to submit an affidavit along with all documents and D.D towards requisite fee and he had complied with the same. The respondent No.3, after going through all the papers, informed him that they cannot consider his request as the title of land is subjudice before a Civil Court.

It is further stated that respondent No.4 claiming interest in the property purchased by the petitioner clandestinely alleging that he purchased the said property under registered sale deed, dated 18-02-2005 from M.Edmand & Md. David. In fact, the vendors of respondent No.4 had no title to convey as the sale deeds in their favour were cancelled way back in 1983. It is also stated that the petitioner filed O.S.No.366 of 2005 on the file of the Junior Civil Judge, East & North, R.R. District and the same is pending. In order to circumvent the proceedings, respondent No.4 appeared to have obtained premises number from respondent No.1 and fraudulently sanctioned service connection showing the premises of the petitioner as that of his premises. As stated above, the petitioner had been in possession since 1989 and the compound wall and room were constructed by him with his retirement benefits. Respondents 1 to 3 are aiding respondent No.4 for illegal gains. Though respondents 1 to 3 have knowledge of his representations, did not choose to put the petitioner on notice of the same. It is also stated that coming to know about the fraud

played by respondent No.4, the petitioner addressed letters to Respondents 1 to 3 to recall their approvals, followed by legal notice, dated 13-03-2005, but in vain. Thus, the inaction on the part of Respondents 1 to 3 is deliberate and to cause loss to the petitioner. It is also stated that the petitioner was aged about 65 years and he had been protecting his property with much strain. In order to commence the construction, he had been continuously approaching respondent No.1 through several letters and legal notices dated 27-01-2005, 01-03-2005, 03-03-2005, 09-03-2005, 12-03-2005, 19-03-2005 and 21-03-2005. But the respondent No.1, brushing aside his letters and legal notices, allotted house number to respondent No.4 on 16-03-2005. The said act on the part of the respondent No.1 is illegal, unjust and arbitrary and the confrontation of the petitioner with respondents 1 to 3 did not yield positive result and on the contrary, they are aiding respondent No.4. In such circumstances, praying for appropriate relief, this writ petition is filed.

4. Respondent No.4 filed counter affidavit substantially denying the allegations. It is stated in the counter-affidavit that inasmuch as a civil suit is pending before the competent Court, the writ petition itself is not maintainable. It is also stated that originally, the weaker section, Christian Co-operative Housing Society Ltd., Hyderabad had purchased Ac.19-15 gts of land out of Sy.No.57, situated at Karmanghat, Saroornagar Mandal, from the original owners Vanga Band his son Surya Prakash Reddy under registered sale deed bearing No.375/1980, dated 07-01-1980 with the sole object and aim to provide house sites to the persons of weaker sections or its members. One M.J.Samuel was the

General Secretary of the said Society. As per the resolutions passed by the Managing Committee, on 11-07-1980, said M.J.Samuel was authorized to execute the sale deeds on behalf of the Society. It is stated that the writ petitioner is not in possession of the property and he has no title to the property. It is further stated that this respondent is the owner and possessor of plot Nos. 58 and 59, total admeasuring 300 sq. yards, purchased through registered sale deed document Nos.1485 and 1486, registered at Sub-Registrar, Champapet, R.R. District. The same was purchased from Edmand and G. David, who were the members of the said society. After purchasing the said plots, respondent No.4 constructed a house and paying municipal taxes every year and also municipal assessment with the permission of the L.B.Nagar Municipality and he had taken electricity connection and paying taxes to the concerned departments and had been in possession of the property. It is also stated that the writ petitioner filed O.S.No.366 of 2005 on the file of the Principal Junior Civil Judge, R.R. District on the ground that he purchased the property from M.J.Samuel, who was the vendor of the vendors of respondent No.4 and stated that Mr. M.J.Samuel cancelled the sale deed executed in favour of his vendors. In that suit, this respondent filed written statement and denied the alleged cancellation of sale deed. Several other facts in relation to what had been stated in the civil proceedings also had been reiterated. Certain other averments were made relating to some third parties namely, Smt Ramadevi and others filing some cases against the writ petitioner and stated that the petitioner and his vendor were not parties to the said litigation. Hence, the said decree is not binding. It is further stated that in O.S.No.366 of 2005, the writ

petitioner also filed I.A.No.952 of 2005 for an interim injunction. The trial Court without considering the possession of the property from the date of filing the suit came to a wrong conclusion and granted injunction in favour of the writ petitioner. Aggrieved by the same, respondent No.4 preferred C.M.A.No.112 of 2005 on the file of the II Additional District Judge and along with the appeal, he also filed I.A.No.1165 of 2005 to set aside the interim injunction granted in favour of the writ petitioner. The appellate Court, after considering the documents on record, suspended the injunction order passed in I.A.No.952 of 2005 dated 06-06-2005 and directed the parties to maintain status quo. The writ petitioner has not brought to the notice of this Court about the suspension of said interim order and suppressed the material facts. The other allegations also had been denied.

These are the respective stands taken by the respective parties to the litigation.

5. Though the Commissioner of Municipality, the Divisional Engineer, Electricity Department and the Assistant Engineer, Electricity Department are shown as respondents 1 to 3, predominantly, the dispute appears to be between the petitioner and respondent No.4. The respective pleadings of the parties had already been narrated supra. It is not in controversy between the parties that a civil suit in O.S.No.366 of 2005 on the file of the Junior Civil Judge, East and North, R.R. District for the self same property is pending in between the petitioner and respondent No.4. Whatever the other factual aspects, may be the fact remains that the petitioner had been agitating the matter by making several representations and sending several letters. But for the reasons

best known, the respondent No.1 had not taken into consideration these aspects. It is no doubt true that subsequent incidents also may have to be taken into consideration while disposing of the writ petition. It is also a fact that a civil dispute relating to house property is pending disposal. Whatever the reasons, may be in view of the facts stated in the counter-affidavit that status quo was directed to be maintained by the parties till a decision is taken afresh by respondents 1 to 3 in the light of the representations already made by the petitioner in relation to the controversy in question.

6. In view of the same, the Writ Petition is disposed of with a direction to the respondents 1 to 3 to put the petitioner and also the respondent No.4 on notice considering all the objections raised by the petitioner and pass appropriate orders in this regard. Till then, it is needless to say that the status quo to be maintained as directed by the appellate Court in C.M.A. specified supra. It is needless to say that respondents 1 to 3 to expedite and take an early decision in the matter. No order as to costs.

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P.S.NARAYANA,J

Dated:01-08-2006

sj